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LIABILITIES OF LODGING-HOUSE KEEPERS.[1]

The law on this very important branch of contract is now completely unsettled by the recent difference of judgment in the Court of Queen's Bench, in the case of *Dansey* vs. *Richardson*, 23 Law J., Q. B. 217.

We will state the case and the *rationale* of the conflicting judgments, and then adventure a few remarks upon the law, as it seems to us to be, on a subject, which the large amount of property and resposibility at stake render it desirable should be determined with as little delay as possible.

The plaintiff was a lady, boarding in the house of the defendant at a weekly payment, upon the terms of being provided with board and lodging, and attendance. The plaintiff being about to leave the house, sent one of the defendant's servants to purchase some biscuits, and he left the door ajar, and whilst he was absent on the errand, a thief entered the house and stole a box of the plaintiff's from the hall. The learned judge directed the jury, that the defendant was not bound to take more care of the house and the

[1] 52 Lond. Law Mag. 153.

things in it than a prudent owner would take, and that she was not liable if there were no negligence on her part in hiring and keeping the servant; and he left it to the jury to say whether, supposing the loss to have been occasioned by the negligence of the servant in leaving the door ajar, there was any negligence on the part of the defendant in hiring or keeping the servant. It was held by the Court, that at least it was the duty of the defendant to take such care of her house, and the things of her guests in it, as every prudent householder would take. Lord Campbell, C. J., and Coleridge, J., held, that she was bound, not merely to be careful in the choice of her servants, but absolutely to supply the plaintiff with certain things, and to take due and reasonable care of her goods; and that, if there had been a want of such care as regarded the plaintiff's box, it was immaterial whether the negligent act was that of the defendant or her servant, though every care had been taken by the defendant in employing such servant; and, consequently, that the direction of the learned judge was not correct.

Wightman and Erle, JJ., however, held, that the defendant was not bailee of the goods, and that her duty required merely that she should take the same care of her lodger's goods that a prudent owner would do of her own, and that as there was no proof that the defendant had been negligent in hiring trustworthy servants, she could not be held answerable for a single act of negligence, such as that which occasioned the loss in question.

There was, apparently, no doubt that the servant must be deemed the agent of the defendant, and that the usual sequences of that relation attach to this case; so Story's *dictum*, "that the master is always liable to third persons for the misfeasances, and negligence, and omissions of duty of his servant, within the scope of his employment," is *prima facie* applicable to this case. The point at issue is, what kind of misfeasances and negligences is a lodging-house keeper liable for? Must it be actual or constructive negligence? And is she so liable for the safe custody of her tenant's goods as, for example, a carrier or railway company, for negligence by their servants, without any fault or laches on her own part? In fact, the question may be still more briefly summed up in this—Was the defendant a

bailee for reward or not? If she were, her liability is clear and undisputed; for, as Story holds, the hirer (or hiree, as the case may be) is not only liable for his own personal default and negligence, but for that of his children, servants, and domestics about the thing hired. And in this case the law, both old and new, is sufficiently explicit, as these cases suffice to show:—

"If a man brings a horse to a smith to be shod, and the servant pricks it; or if the servant of a surgeon makes the wound worse; in both these cases an action lies against the master. (Bac. Abridg. "Master and Servant," K. See *Pilkington's Case*, 21st vol. Abridg. 693; Cro. Eliz. 181.)

"The master must also answer for torts and injuries done by his servant in execution of his authority; as where a pawnbroker's servant took a pawn, the pawner came and tendered the money to the servant, who said that he had lost the goods; upon which the pawner brought trover against the master, and it was held well. (2 Salk. 441, part 2, per Holt, C. J. See also Lord Raymond, 738, Cas. temp. Holt.)

"So where a carter's servant run his cart over a boy, it was held the boy should have his action against the master for the damage he sustained by this negligence." (Cited in the last case.)

So also the servant of the hirer leaving the stable-door open, so that the vendor's horse is lost, or the agister the gate of the field: it is admitted that these are negligences of the servant which render the master liable, but because he is bailee.

Justices Wightman and Erle held that the defendant was *not* bailee; and the latter justly put the question thus:—

"In the class of cases relative to certain bailees for reward, who are liable for the loss of the goods, if they are stolen through the negligence of their servants, the goods are delivered to and are in the possession of the bailee, who, by the contract of bailment for reward, undertakes a private duty to the bailor to keep them with care, and to deliver them again; and this private duty is the test to ascertain whether any alleged state of facts amounts to actionable negligence; for the question, whether given facts amount to actionable negligence depends upon the legal duty owed to the party who

affirms the negligence to be a breach of the duty owing to him by the opposite party."

Mr. Justice Erle assumes that there was no bailment for reward, on what we confess, with great deference to his better judgment (and be it admitted that he tried the case), is a series of mistakes in *fact*, rather than in law.

1. He says, "there was no delivery of the goods of the plaintiff to the defendant." Indeed, not when they were delivered to the defendant's servant within the scope of the duties which the defendant contracted, by her servants, to perform? And was not this precisely what took place when the goods were placed in the custody of the servant, and when, as the case states, he carried her trunk down stairs, and placed it ready for her departure in the hall? Delivery can scarcely be more complete.

2. Mr. Justice Erle says, "there is no contract to keep them [the goods] with care, and deliver them again." There is just as much a contract to keep the lodger's goods with care, as to keep herself with care. And it seems to be just as much a breach of that contract to cause the loss of her goods, by negligence, in leaving a door open, as to cause the loss of her health by negligence in giving her bad food or a damp bed.

3. "There is," adds Mr. Justice Erle, "no reward in respect of goods, the terms being the same for a boarder whether with or without goods." If so, then a boarding-house keeper can, of course, refuse admittance to his guest's luggage. If it is no part of the contract he has entered into to board the lodger at two or three guineas per week, as in this case, to house his goods, and if, as the judge further says, "there is no duty of keeping them, owing from the defendant to the plaintiff," there is certainly no duty of receiving; and the boarding-house keeper may refuse to give them admission when they are brought to her house. It is often hazardous to handsomely papered and carpeted staircases to have heavy boxes carried up them, and lodging-house letters are under an obligation to Mr. Justice Erle for the convenient consequences which flow from his decision. Again, does Mr. Justice Erle repeat in his judgment, that "the goods of the plaintiff remained in her possession

and under her control, and were disposed of by her as she chose, without notifying what she had done to the defendant?"

This is obviously not so. They were placed, as we said before, not only constructively under her care when they entered the house, of which she, and not the plaintiff, had the control; but they were placed specially under her care by being so placed in the hands of her servant; one of whose express duties it was to deal with and take custody of them. The plaintiff needed no notification of her possession of the goods, inasmuch as it cannot be seriously disputed that the boarding-house keeper does contract to receive the goods, as well as the person of his lodger: and this is implied *ex necessitate* in the nature of the contract. And if notification were necessary of the special custody by the servant of the goods, *it* was also sufficiently implied by the knowledge the defendant had of the plaintiff's departure, and the customary duty thereupon devolving on her servant to remove the luggage of the departing guest.

We have therefore in this case every fact which can make the defendant bailee for reward. It is admitted that she lodged the plaintiff for reward, and it is absurd to deny that she also lodged for reward that which was essential to the lodger's enjoyment of her contract, namely, her luggage. Mr. Justice Erle's hypothetical lodger, without any goods, would certainly be an eccentric phenomenon; at any rate, a very abnormal lodger; imposing small necessity on other lodgers, to notify their possession of wearing apparel and its presence in their lodgings. The defendant also was the constructive depositary of the goods, just as much as any warehouseman or carrier. Her house received them; her servant had sole charge of the safe keeping of the goods in that house when they were lost; and she, the defendant, had sole control over the servant. This case comes, therefore, in all natural respects within that class of cases referred to in the famous judgment of Lord Mansfield in *Coggs* vs. *Barnard*—

"But if he or his servant leave the house or stable doors open, and the thieves take the opportunity of that, and steal the horse, he will be chargeable, because the neglect gave the thieves the occasion to steal the horse. Bracton says, 'the bailee must use the utmost

care, but yet he shall not be chargeable where there is such a force as he cannot resist.' "

The nature of the relation between the plaintiff and defendant being thus clearly that of bailor and bailee for reward, it is quite irrelevant to import into the consideration of the case, what care the defendant did or did not take in hiring trusty servants. It is presumable the railway directors take especial care to select careful drivers and guards of their trains; yet what railway company ever yet dreamt of pleading to an action for injury to a passenger or his goods, that they had taken due exercise, care, and discretion, in selecting and hiring their servants! But such a question is wholly impertinent to the issue under any aspect. If the lodging-house keeper never has charge or even cognizance of her lodger's goods, as Mr. Justice Erle contends, it is quite immaterial whether she has careful servants or not, for they have no duty to perform in respect to the lodger's goods, and can therefore be guilty of no breach of duty respecting them: at any rate, none such as can implicate their mistress. If the defendant had charge of the goods, no care she may have taken to hire careful servants can exempt her from her liability as bailee for reward. According to Justices Erle and Wightman in this case, there must be double negligence,—first, in the mistress as regards the hiring of the servant; secondly, in the servant in not taking proper care of the goods. Very justly and ably did Mr. Justice Coleridge say this "seems to me a novelty in the law, without a foundation in any satisfactory principle, complicating the inquiry for the jury very inconveniently, and likely to lead them to unjust conclusions." It also introduces a most impracticable and vague standard of liability. The irresponsibility of the master is, as the learned judge also said, "consistent with the grossest negligence, even misfeasance of the servant; for a mistress who uses all ordinary care in the hiring and over-looking of her domestics, yet may take careless or willful servants, or drunken ones, or she may unfortunately have a servant who is commonly sober, and yet who, upon one occasion being intoxicated, may occasion great loss or injury to the goods of the guests in the house."

From the great facilities for robbery and loss by inadvertence

and negligence in an inn, an innkeeper is held liable with much more strictness[1] for the goods of his guests in his house, although he may be entirely ignorant of their existence there. But still a liability also devolves on boarding and lodging-house keepers, by no means very different in degree, for the circumstances are not dissimilar.

We much regret the unsettled state in which practically the law is left by the view which those estimable judges, Justices Wightman and Erle, took on the subject of this case. We, however, cannot do better than cite the following common-sense lucid statement of what always has been the law, and we trust always may be, on this important branch of the law of contracts, from Lord Campbell's judgment:—

"I think there may be negligence in a servant in leaving the outer door of a boarding-house open, whereby the goods of a guest are stolen, which might render the master liable. I think there is a duty on his part, analogous to that incumbent on every prudent householder, to keep the outer door of the house shut at times when there is a danger that thieves may enter and steal the goods of the guest. If he employs servants to perform this duty, while they are performing it they are acting within the scope of their employment, and he is answerable for their negligence. He is not answerable for the consequences of a felony, or even a willful trespass committed by them; but the general rule is, that the master is answerable for the negligence of his servants while engaged in offices which he employs them to do; and I am not aware how the keeper of a lodging-house should be an exception to the rule. He is by no means bound to the same strict care as an innkeeper; but within the scope of that which he ought to do, I apprehend that he is equally liable, whether he is to do it by himself or his servants. The doctrine, that inquiry is to be made, whether the master was guilty of negligence in hiring or keeping the servants, is, I believe, quite new."

We trust it will prove equally evanescent, as we are sure that it

[1] A strictness somewhat weakened by the late decision in *Amistead* vs. *Wilde*, Q. B., where the defendant was held exonerated because his guest had displayed money and then put it into an insecure box.